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Submitted by Carrie Ryan
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It's Official – Trans-Texas Corridor 35 is Dead!

Bigfork, Mt.

August 11, 2010

The first leg of the NAFTA Superhighway is DEAD, according to the Federal Highway Administration's Record of Decision (ROD) on the environmental study for the Trans-Texas Corridor - 35.

In June, the Eastern Central Texas Sub-Regional Planning Commission formed by five towns, their school districts and a local businessman in Central Texas, sent a petition to the Council of Environmental Quality (Council) concerned that a critical loophole was still open that would allow the Trans-Texas Corridor – 35 to be revived. They asked the Council to step in and require the Federal Highway Administration (FHA) to withdraw the study in its entirety.

Instead of withdrawing the study, the FHA stated eight different times in what otherwise should have been a typical ROD that the TTC 35 project had ended. They even went so far as to state that the environmental study could not be used as a basis for any further study.

Fred Kelly Grant, President of American Stewards who wrote the Petition stated: "The Federal Highway Administration has pounded the final nail in the coffin of the Trans-Texas Corridor-35. The Agency's final Record of Decision, issued on July 20, 2010, selected the No Action Alternative, but went further in ordering that "a study area for the TTC-35 Project will not be chosen and the TTC-35 Project is concluded." Twice, the ROD states that the "project is concluded," and six times it states that "the project ends. If TXDOT attempted to revive the 35 Corridor project and use the same EIS, this ROD would provide the base for issuance by a United States District Judge of a Declaratory Judgment prohibiting the action." This is an unprecedented action.

The corridor concept was unveiled by Governor Rick Perry in 2003 that would have confiscated 586,000 private acres in Texas alone and displace over one million people and their families.

The TTC battle is the first time the coordination process was invoked for an issue that didn't involve federal lands. Texas is 97% privately owned. Still, the coordination requirement in the National Environmental Policy Act and a unique Texas state law brought both federal and state agencies to Holland, Texas to resolve the inconsistencies between the TTC and local policies.

Go to www.AmericanStewards.us to see the Petition filed with CEQ and the ROD by the FHA. Read the "TTC Petition Filed with CEQ" in this month's Digest to learn more about Eastern Central's request and how they defeated the TTC.

We owe a great deal to the five mayors and their school districts. They made coordination work and achieved our greatest victory to date.

AMERICAN STEWARDS

for Liberty

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class

Start changing your community by attending the "Coordination Class." See how the coordination process gives you an equal seat at the table with federal and state agencies during resource management plan revisions, species listings, NEPA studies and more. Learn how over 100 communities nationwide are now using this powerful process to protect their local economy, property rights and way of life. Make plans to attend today and see how you can bring control home to your community. For more information go to www.americanstewards.us/training/training.



Ravalli County, Montana

When

January 15, 2011
9:00 AM - 5:00 PM

Registration

\$45/Person

Where

Bitterroot River Inn &
Conference Center
139 Bitterroot Plaza Drive
Hamilton, MT 59840
(406) 375-2525
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A new and powerful tool that has been successfully used to counter the intrusion of federal and state policies into local communities has been developed by the American Stewards of Liberty. It's called "Coordination." As a result, there are some counties in the western US that are free of many of the dangerous federal environmental policies that are plaguing so many other areas of the nation. Most importantly, Coordination was used to successfully stop the Trans Texas Corridor. In this article, Dan Byfield of American Stewards tells how it worked in Texas. TAD

Coordination Works

by Dan Byfield

Recently, Arizona passed a new bill which requires local governments to initiate coordination with federal and state agencies. In this article we look at the existing law in Texas that requires state agencies to coordinate with local governments. This is the powerful statute instrumental in stopping the I-35 Trans-Texas Corridor (TTC). It is a simple, one sentence provision that could be helpful if enacted in other states as well.

Small Local Governments Band Together

When it comes to coordination, Texas has a unique state statute; Section 391 of the Texas Local Government Code. This section allows cities and counties to "join and cooperate to improve the health, safety, and general welfare of their residents...and plan for future development of communities, areas, and regions..." through joint planning commissions.

It takes two towns or two counties or one of each to form a Sub-Regional Planning Commission under this statute. Once formed, school districts, water districts and other local governments in the area can join the Commission.

For example, the Eastern Central Texas Sub-Regional Planning Commission, the Commission that stopped the I-35 TTC, was first formed by four towns followed by each of their respective four school districts. Later, a fifth town and school district were added. The school districts were a vital part of the Commission since their combined jurisdictions covered half the county.

This part of the statute allows smaller local governments that often do not have the means to take on major issues alone, to join together and plan for the future of their communities.

State Agencies Can't Escape Coordination

Still, the most important part of the statute is found at Section 391.009(c). It reads:

"In carrying out their planning and program

development responsibilities, state agencies shall, to the greatest extent feasible, coordinate planning with commissions to ensure effective and orderly implementation of state programs at the regional level."

Once a group of local governments form a Planning Commission, state agencies must coordinate their plans and programs with that commission. This state statute gave Eastern Central a direct route to TxDOT and required them to coordinate the TTC with their local governments.

A state representative added 391.009(c) in 2001. He now serves as a U.S. Federal District Judge in Texas who was appointed to the bench by George W. Bush. When asked why he sponsored the legislation, he responded by saying: "You know me, I'm a local control kind of guy. I was sick and tired of TxDOT not working with my local people."

As an attorney, he realized the relevance and power of the word "coordinate." Six years later, we used it to bring one of the nation's largest state agencies to Holland, Texas, population 1,200, and stop Governor Rick Perry's \$80 billion pet project.

Equal, Not Subordinate

Until this section was added, the code was merely a planning code with no teeth. When "shall, to the greatest extent feasible, coordinate..." was added, it became a powerful tool local units of government could utilize to insist that state agencies coordinate their plans and policies with local priorities.

The code didn't define coordinate, but we found a 1946 state District Court of Appeals decision that merely used the dictionary definition that defined "coordinate" as "equal to, not subordinate." The 391 statute gives cities, counties and small local government units the legal basis to bring state agencies to the table and meaningfully coordinate their plans, just as the federal agencies must do under those federal laws that also require the agencies to coordinate with local governments. (See *Chapter 391, Local Government Code and Rule of Coordination*).

In the case of Eastern Central, they set their policy very simply to be: "No Trans-Texas Corridor shall go through our jurisdiction." With that policy being "equal, not subordinate," they created a 30-mile gap in TxDOT's plans to build the TTC.

TxDOT could no longer ignore the small, rural communities, but now had to come to the table and

(Cont'd on Page 4)

work to resolve the two positions. Once there, Eastern Central laid out the destructive impact such a plan would have on their community with specific, detailed facts, the kind that made for a successful case in court should they need to go that route.

You already know the ending of this story. TxDOT eventually submitted a "no build" alternative, and the Federal Highway Administration issued a Record of Decision which ended the I-35 TTC project for good.

Simple Provision States Should Consider

For those who do not live in Texas, it is worth considering how a similar statute in your state could work. Even without the provision that gives smaller, rural local units of government the ability to band together, the simple addition of the coordination language of 391.009(c) would be incredibly helpful to local governments giving them the legal basis to require state agencies to coordinate with their local plans.

You may already have something similar in your state, but if not, the Texas language may be a simple amendment to any statute that pertains to local government. ~~In every state, cities and counties normally have specific state statutes that pertain to their constitutional authority, their creation, jurisdiction, enforcement and taxing authority, etc.~~ Find a state representative or state senator that understands and agrees with the coordination process and ask them to add similar language.

Texans Need to Remain Vigilant

For those who do live in Texas, keep an eye on our state Legislature. Many local governments have now followed in the footsteps of Eastern Central and are successfully challenging our state agencies on many fronts. Eventually, perhaps this upcoming Session there will be an effort made to remove this section from our code. We must remain vigilant and protect this critical provision.

Investigate your own state statutes and see what may already be on the books requiring state agencies to coordinate with local governments. Utilize these statutes. If you do not find what you are looking for, consider advocating the simple language found in the Texas code requiring state agencies to coordinate with local government. Or, take a look at what the state of Arizona just passed.

Requiring state agencies to coordinate with your local governments is one of the best ways of ensuring your local priorities are implemented and your communities are protected from federal mandates and edicts handed down from Washington.

American Stewards of Liberty

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2011 Session

Exhibit 35

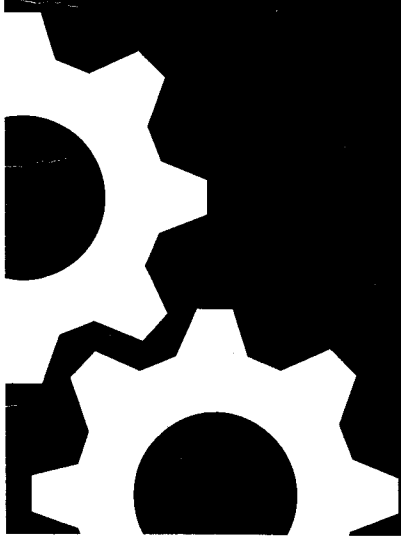
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